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Attorneys for Defendant  
Twin Tiger Footwear, Inc.

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

AIRWAIR INTERNATIONAL LTD., a	)	Case No. 12-cv-04905-PSG
company of the United Kingdom,	)	Honorable Paul S. Grewal
	)	
Plaintiff,	)	<b>ANSWER TO COMPLAINT</b>
	)	
vs.	)	
	)	
TWIN TIGER FOOTWEAR, INC.; and	)	
DOES 1-50,	)	
	)	
Defendants.	)	

Defendant Twin Tiger Footwear, Inc. through its counsel, Stephen J. Thomas, in answer to plaintiff's Complaint, admit, deny, or otherwise allege as follows:

1. Defendant lacks information and belief sufficient to form a response to Paragraph 1 of the Complaint, and on that basis, denies the allegations contained in Paragraph 1 of the Complaint.
2. Defendant admits the allegations contained in Paragraph 2 of the Complaint.
3. Defendant admits the allegations contained in Paragraph 3 of the Complaint.
4. Defendant admits plaintiff has sued defendants DOES 1 through 50. Defendant lacks information and belief sufficient to form a response to the remaining allegations contained in Paragraph

1 4 of the Complaint and on that basis denies the remaining allegations contained in Paragraph 4 of the  
2 Complaint.

3 5. Defendant admits the allegations contained in Paragraph 5 of the Complaint.

4 6. Defendant admits the allegations contained in Paragraph 6 of the Complaint.

5 7. Defendant admits the allegations contained in Paragraph 7 of the Complaint.

6 8. Defendant lacks information and belief sufficient to form a response to Paragraph 8 of  
7 the Complaint and on that basis, denies the allegations contained in Paragraph 8 of the Complaint.

8 9. Defendant lacks information and belief sufficient to form a response to Paragraph 9 of  
9 the Complaint and on that basis, denies the allegations contained in Paragraph 9 of the Complaint.

10 10. Defendant lacks information and belief sufficient to form a response to Paragraph 10 of  
11 the Complaint, and on that basis, denies the allegations contained in Paragraph 10 of the Complaint.

12 11. Defendant lacks information and belief sufficient to form a response to Paragraph 11 of  
13 the Complaint, and on that basis, denies the allegations contained in Paragraph 11 of the Complaint.

14 12. Defendant lacks information and belief sufficient to form a response to Paragraph 12 of  
15 the Complaint, and on that basis, denies the allegations contained in Paragraph 12 of the Complaint.

16 13. Defendant lacks information and belief sufficient to form a response to Paragraph 13 of  
17 the Complaint, and on that basis, denies the allegations contained in Paragraph 13 of the Complaint.

18 14. Defendant lacks information and belief sufficient to form a response to Paragraph 14 of  
19 the Complaint, and on that basis, denies the allegations contained in Paragraph 14 of the Complaint.

20 15. Defendant denies the allegations contained in Paragraph 15 of the Complaint.

21 16. Defendant denies the allegations contained in Paragraph 16 of the Complaint.

22 17. Defendant denies the allegations contained in Paragraph 17 of the Complaint.

23 18. Defendant denies the allegations contained in Paragraph 18 of the Complaint.

24 19. Defendant denies the allegations contained in Paragraph 19 of the Complaint.

25 20. Defendant denies the allegations contained in Paragraph 20 of the Complaint.



38. Defendant denies the allegations contained in this Paragraph 38 of the Complaint.

39. Defendant denies the allegations contained in this Paragraph 39 of the Complaint.

**FIFTH CLAIM FOR RELIEF**

40. Defendant realleges and incorporates by reference each of its responses to Paragraphs 1 through 39 of the Complaint.

41. Defendant denies the allegations contained in this Paragraph 39 of the Complaint.

42. Defendant denies the allegations contained in this Paragraph 42 of the Complaint.

**SIXTH CLAIM FOR RELIEF**

43. Defendant realleges and incorporates by reference each of its responses to Paragraphs 1 through 42 of the Complaint.

44. Defendant denies the allegations contained in this Paragraph 44 of the Complaint.

45. Defendant denies the allegations contained in this Paragraph 45 of the Complaint.

46. Defendant denies the allegations contained in this Paragraph 46 of the Complaint.

47. Defendant denies the allegations contained in this Paragraph 47 of the Complaint.

**PRAYER FOR RELIEF**

Wherefore, defendant denies plaintiff is entitled to any relief as follows:

A. Defendant denies that plaintiff is entitled to the relief requested in Paragraph A of the Complaint or any relief whatsoever.

B. Defendant denies that plaintiff is entitled to the relief requested in Paragraph B of the Complaint or any relief whatsoever.

C. Defendant denies that plaintiff is entitled to the relief requested in Paragraph C of the Complaint or any relief whatsoever.

D. Defendant denies that plaintiff is entitled to the relief requested in Paragraph D of the Complaint or any relief whatsoever.

1 E. Defendant denies that plaintiff is entitled to the relief requested in Paragraph E of  
2 the Complaint or any relief whatsoever.

3 F. Defendant denies that plaintiff is entitled to the relief requested in Paragraph F of  
4 the Complaint or any relief whatsoever.

5 G. Defendant denies that plaintiff is entitled to the relief requested in Paragraph G  
6 of the Complaint or any relief whatsoever.

7 H. Defendant denies that plaintiff is entitled to the relief requested in Paragraph H  
8 of the Complaint or any relief whatsoever.

9 I. Defendant denies that plaintiff is entitled to the relief requested in Paragraph I of  
10 the Complaint or any relief whatsoever.

11 J. Defendant denies that plaintiff is entitled to the relief requested in Paragraph J of  
12 the Complaint or any relief whatsoever.

13  
14  
15 **FURTHER ANSWER AND AFFIRMATIVE DEFENSES**

16 By way of further Answer and as affirmative defenses, defendant denies that it is liable to  
17 plaintiff on any of the claims alleged and denies that plaintiff is entitled to damages, treble or punitive  
18 damages, equitable relief, attorneys' fees, costs, pre-judgment interest or to any relief whatsoever, and  
19 states as follows:

20 **FIRST AFFIRMATIVE DEFENSE**

21 **(Failure to State a Claim)**

22  
23 48. The Complaint, on one or more counts set forth therein, fails to state a claim upon which  
24 relief can be granted.

25 **SECOND AFFIRMATIVE DEFENSE**

26 **(Fair Use)**

27 49. The claims made in the Complaint are barred, in whole or in part, by the doctrine of fair  
28 use.

**THIRD AFFIRMATIVE DEFENSE**

**(First Sale Doctrine)**

48. The claims made in the Complaint are barred, in whole or in part, by the first sale doctrine.

**FOURTH AFFIRMATIVE DEFENSE**

**(Functionality)**

49. The claims made in the Complaint are barred, in whole or in part, on the basis that any marks and use of marks at issue are functional.

**FIFTH AFFIRMATIVE DEFENSE**

**(Innocent Infringement)**

50. The claims made in the Complaint are barred, in whole or in part, because any infringement, if any, was innocent.

**SIXTH AFFIRMATIVE DEFENSE**

**(Statutes of Limitations)**

51. The claims made in the Complaint are barred, in whole or in part, by applicable statutes of limitations.

**SEVENTH AFFIRMATIVE DEFENSE**

**(Laches)**

52. Plaintiff's claims are barred by laches, in that Plaintiff has unreasonably delayed efforts to enforce its rights, if any, despite its full awareness of defendant's actions.

**EIGHTH AFFIRMATIVE DEFENSE**

**(Non-Infringement)**

53. Defendant has not infringed any applicable trademarks under federal or state law.

**NINTH AFFIRMATIVE DEFENSE**

**(No Causation)**

54. Plaintiff's claims against defendant are barred because plaintiff's damages, if any, were not caused by defendant.

**TENTH AFFIRMATIVE DEFENSE**

**(No Damage)**

55. Without admitting that the Complaint states a claim, there has been no damage in any amount, manner or at all by reason of any act alleged against defendant in the Complaint, and the relief prayed for in the Complaint therefore cannot be granted.

**ELEVENTH AFFIRMATIVE DEFENSE**

**(Unclean Hands)**

56. Plaintiff's claims are barred by the doctrine of unclean hands.

**TWELFTH AFFIRMATIVE DEFENSE**

**(Lack of Irreparable Harm)**

57. Plaintiff's claims for injunctive relief are barred because plaintiff cannot show that it will suffer any irreparable harm from defendant's actions.

**THIRTEENTH AFFIRMATIVE DEFENSE**

**(Adequacy of Remedy at Law)**

58. The alleged injury or damage suffered by plaintiff, if any, would be adequately compensated by damages. Accordingly, plaintiff has a complete and adequate remedy at law and is not entitled to seek equitable relief.

**FOURTEENTH AFFIRMATIVE DEFENSE**

**(Failure to Mitigate)**

59. The claims made in the Complaint are barred, in whole or in part, because of a failure to mitigate damages, if such damages exist.

**FIFTEENTH AFFIRMATIVE DEFENSE**

**(Duplicative Claims)**

60. Without admitting that the Complaint states a claim, any remedies are limited to the extent that there is sought an overlapping or duplicative recovery pursuant to the various claims against defendant.

**SIXTEENTH AFFIRMATIVE DEFENSE**

**(Fraud)**

61. The claims made in the Complaint are barred, in whole or in part, by fraud on the United States Patent & Trademark Office.

**SEVENTEENTH AFFIRMATIVE DEFENSE**

**(Third-Party Use)**

62. The claims made in the Complaint are barred, in whole or in part, by reason of other parties' use of any marks at issue.

**EIGHTEENTH AFFIRMATIVE DEFENSE**

**(Actions of Others)**

63. The claims made in the Complaint are barred, in whole or in part, because defendant is not liable for the acts of others over whom it has no control.

**NINETEENTH AFFIRMATIVE DEFENSE**

**(No Punitive Damages)**

64. Defendant alleges that no punitive or exemplary damages should be awarded arising out of the claims made in the Complaint under the law of the United States and California because: (i) any recovery of punitive or exemplary damages arising out of the claims made in the Complaint would constitute the imposition of a criminal fine or penalty without the substantive or procedural safeguards guaranteed by the Fifth and Fourteenth Amendments to the United States Constitution and by



1 Article I, Section 7 of the California Constitution; (ii) the imposition of any punitive or exemplary  
2 damages in this lawsuit would constitute an excessive fine or penalty under Article I, Section 17 of the  
3 California Constitution; (iii) any such award is precluded or limited pursuant to Section 3294 of the  
4 California Civil Code or the United States Constitution and the due process clause; and (iv) punitive  
5 damages would violate the United States and California Constitutions and common law because such  
6 an award is based from procedures that are vague, open-ended unbound in discretion, arbitrary and  
7 without sufficient constraints or protection against arbitrary and excessive awards.  
8

9 **WHEREFORE**, defendant prays for judgment as follows:

- 10 1. That plaintiff takes nothing by way of its Complaint;  
11 2. That the Complaint, and each and every purported claim for relief therein, be dismissed  
12 with prejudice.  
13 3. That defendant be awarded its costs of suit incurred herein, including attorneys' fees and  
14 expenses; and  
15 4. For such other and further relief as the Court deems just and proper.  
16

17 THE THOMAS LAW GROUP  
18

19 By: /s/ Stephen J. Thomas  
20 Stephen J. Thomas,  
21 Attorney for Defendant Twin Tiger Footwear, Inc.

22 Dated: January 24, 2013  
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28

**DEMAND FOR JURY TRIAL**

Defendant Twin Tiger Footwear, Inc. hereby demands a trial by jury on all claims.

THE THOMAS LAW GROUP

By: /s/ Stephen J. Thomas  
Stephen J. Thomas,  
Attorney for Defendant Twin Tiger Footwear, Inc.

Dated: January 24, 2013